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THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Thiele, Jr.

Serial No.: 10/827,564

Group Art Unit: 3654

Filed: April 19, 2004

Examiner: E. Okezie

For: SHOVELS AND OTHER IMPLEMENTS WITH SCALLOPED LEADING EDGES

RESPONSE TO FINAL OFFICE ACTION

Mail Stop AF

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

Dear Sir:

In response to the final Office Action mailed September 29, 2005, the Examiner's attention is directed to the following remarks.

Applicant respectfully requests reconsideration of the claim rejections in this case on the grounds that the Examiner has apparently misinterpreted the prior art.

Claims 1, 3-6, 11 and 12 stand rejected under 35 U.S.C. §102(e) as being anticipated by Duprey, U.S. Patent No. 6,892,419. However, independent claim 1 includes the limitation of a plurality of concave scallops on the leading edge, each scallop defining a segment of a circle, and wherein the segments intersect at distinct forward points. According to the Examiner, the teachings of Duprey meet such limitations, but they do not. The Examiner states that Duprey has a plurality of concave scallops but the scallops of Duprey are convex. To call the scallops of Duprey concave uses a definition that is repugnant to the truth. Attached herewith are several dictionary definitions, each one defining concave as being "hollowed out," conformal to "the inside of a sphere," "curving inward," and so forth. Indeed, the Latin origin of concave is concavus, which comes from "hollow." It is well settled that anticipation may be established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of the claimed invention. *RCA Corp. v. Applied Digital Data Systems*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Since Duprey teaches convex as opposed to concave scallops, anticipation is precluded for that reason alone. Moreover, since Duprey